IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITOIN NO.1953 OF 2005

Mr.Jagir Singh Taneja ..Petitioner

Vs.

Citicorp Finance (I)Ltd.
and Anr. ..Respondents

...

Ms.Shobha Kher i/b G.K.Tripathi
Advocate for Petitioner
Mr.K.G.Menon Senior Advocate i/b J.L.Phaujdar
for Respondent no.1.
Mr.V.B.Konde-Deshmukh A.P.P. for the State

...

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : OCTOBER 10, 2005

P.C.

1. Heard the learned advocate for the petitioner i.e. complainant and learned counsel for the respondent no.1 i.e. original accused and the learned A.P.P. for the State.

2. The respondent no.1 was facing the prosecution in C.C.No.28/SW/2004 which was pending before the learned Metropolitan Magistrate, 21st Court, Bandra, Mumbai. In the said case, complaint came

to be filed against the respondent for offence under Section 420 r.w. 34 of IPC. In the said case, process came to be issued against the respondent under Section 420 r.w.34 of IPC. Being aggrieved by the said order, the revision came to be preferred by the respondent before the Sessions Court. By order dated 16.7.2005, the learned Sessions Judge set aside the process in respect of the respondent-Bank. The said process came to be set aside on the ground that respondent is a juristic person and therefore, the punishment of imprisonment cannot be awarded under Section 420 of IPC on the Bank and that the Bank does not have requisite mens rea to commit the offence of cheating. Thus, the learned Sessions Judge was of the opinion that the respondent no.1 is a juristic person and punishment cannot be awarded, hence, the prosecution against the respondent no.1-bank would not be justified.

3. However, in the case of **Standard Chartered Bank and others Vs. Directorate of Enforcement and others reported in JT 2005 (5) S.C.267**, the Supreme Court has held that there is no blanket immunity

for any company from any prosecution for serious offences merely because the prosecution would ultimately entail the sentence of mandatory imprisonment. Earlier decision of the Supreme Court in the case of **Assistant Commissioner Assessment-II Banglore and others Vs. Velliappa Textiles Ltd. and another reported in JT 2003 (Supplement 2) SC 99; (2003) 11 SCC 405**, was overruled. Similar view as taken in the decision of Velliappa, has been taken in the case of **S.R.Construction Vs. Central Bureau of Investigation reported in 1999 Cri.L.J. 1861 Bombay.** The Sessions Judge had relied upon the decision of S.R.Construction and set aside the process issued against the respondent. In view of the decision of the Supreme court in the case of Standard Chartered Bank, it is clear that the company can be prosecuted. In this view of the matter, the order of the learned Sessions Judge cannot be sustained and is set aside.

4. The learned counsel for the respondent bank has submitted that though various grounds were taken in the revision application, said grounds have not

been considered and the revision came to be allowed only on the above ground. Hence, the Respondent Bank be allowed to agitate those grounds before the Sessions Court. In this view of the matter, as far as the ground on which the revision came to be allowed by the Sessions Court is concerned, the said issue cannot now be agitated by the respondent before the Sessions Court. However, it will be open to agitate any other ground raised in the revision before the said Sessions Court. The learned Sessions Judge shall hear the said revision afresh on merits and thereafter dispose of the same. The parties have accordingly agreed to appear before the Sessions Court on 23.11.2005.

5. Writ Petition is disposed of.

[V.K.TAHILRAMANI,J.]